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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,001	10/24/2003	William C. Phillips	1023-291US01	9336

28863 7590 06/06/2007  
SHUMAKER & SIEFFERT, P. A.  
1625 RADIO DRIVE  
SUITE 300  
WOODBURY, MN 55125

EXAMINER
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FLORY, CHRISTOPHER A

ART UNIT	PAPER NUMBER
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3762

MAIL DATE	DELIVERY MODE
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06/06/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/693,001	<b>Applicant(s)</b> PHILLIPS ET AL.	
	<b>Examiner</b> Christopher A. Flory	<b>Art Unit</b> 3762	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 1-9 and 11-29.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

/George Manuel/  
 Primary Examiner  
 Art Unit 3762

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Continuation of 11. does NOT place the application in condition for allowance because: 2. Claims 1-4, 7, 18-20, 23, 25, 27 and 29 stand rejected under 35 U.S.C. 102(b) as anticipated by Cimochowski et al. (US Patent 5,967,986, hereinafter Cimochowski'986) or, in the alternative, are rejected under 35 U.S.C. 103(a) as obvious over Cimochowski'986 in view of Tiefengraber (US 5,172,110, hereinafter Tiefengraber'110) or in view of Wallerstorfer et al. (US 5,478,995, hereinafter Wallerstorfer'995) or in view of Hagfors (US 3,796,221, hereinafter Hagfors'221).

In reference to claims 1, 4, 18, 25, 27 and 29, the Cimochowski'986 patent teaches a signal transfer unit (see abstract) enabling transfer of physiological data from a physiological sensor attached to a mammalian subject in use (which includes both internal and external devices), to a remote base station (see abstract and fig. 12). According to the Webster's II New Riverside University dictionary the ring like structure of figures 12 within the Cimochowski'986 patent fit the definition of both a channel and an aperture because an aperture is defined as an opening as a hole gap or slit, and a channel is defined as a course through which something can be directed or moved, and though such a ring was not constructed to, it is still capable of holding a portion of clothing associated with a patient due to the fact that the clothing can be placed within the opening, and in turn hold the ring shaped antennae in a relatively fixed position relative to an implanted medical device. The Cimochowski'986 patent teaches the use of a cable or cord of some sort to connect the coil with the power supply and monitoring cable (see fig. 12).

The ring shaped antenna of figure 12 inherently possesses a wide end that can be used for the insertion of clothing. Because the opening of the coil can be defined as both a channel and an aperture, if the coil of the device were held vertically then rotated about its vertical axis, the channel/aperture of the device would appear to be much thinner than the channel/aperture of the coil that is not rotated.

Alternatively, in the same problem solving area, both Tiefengraber'110 and Wallerstorfer'995 teach antenna tags wherein an aperture comprises a wide end and a channel adjacent to the wide end formed to hold a portion of an item of clothing and hold the antenna in a substantially fixed position (Tiefengraber'110: Fig. 1, aperture 15; column 3, lines 5-15; Wallerstorfer'995: Fig. 10, aperture 47, or alternatively any of the fastening mechanisms in Figs. 3, 6, 11, 21; column 6, lines 44-66). In the same field of endeavor, Hagfors'221 shows an antenna attached to an external device and placed substantially in a fixed position relative to an implantable device that comprises a wide end and a narrower channel adjacent capable of holding a portion of an item of clothing. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Cimochowski'986 with the antenna aperture capable of holding an article of clothing as taught by any of Tiefengraber'110, Wallerstorfer'995, and Hagfors'221 in order to provide the Cimochowski'986 system with the same advantages of holding an antenna in a substantially fixed position.

In reference to claims 2 and 19, the ring shaped antenna of figure 12 inherently possesses a wide end that can be used for the insertion of clothing.

In reference to claims 7 and 23, referring to an object or orifice, as being teardrop shaped is quite broad considering the fact that a teardrop can be a multitude of shapes considering its environment. Teardrops can appear to be circular, similar to the coil of the Cimochowski'986 patent, in many environments.

In reference to claims 3 and 20, because the opening of the coil can be defined as both a channel and an aperture, if the coil of the device were held vertically then rotated about its vertical axis, the channel/aperture of the device would appear to be much thinner than the channel/aperture of the coil that is not rotated. The examiner suggests that the applicant alters the phraseology of the claim to state that the thinner channel is disposed next to, above, or beneath the wider aperture, or something of the like.

3. Claims 9, 11, 12, 15, 18-20, 23, 25, 28 and 29 stand rejected under 35 U.S.C. 102(e) as anticipated by Pool et al. (US Patent 6,561,975, hereinafter Pool'975) or, in the alternative, are rejected under 35 U.S.C. 103(a) as obvious over Pool'975 in view of Tiefengraber'110 or in view of Wallerstorfer'995 or in view of Hagfors'221.

In reference to claim 9, the Pool'975 patent teaches a device that is capable of communicating with an implanted device, as well as teaching that the antenna can be housed within a belt (see column 8, lead lines 34-38). Such a housing inherently possesses the ability to have clothing pulled through the channel created by buckling the belt, thereby holding the antenna in a substantially fixed position relative to the implanted device.

In reference to claims 19, 25, 28 and 29, the Pool'975 patent teaches a device that is capable of communicating with an implanted device, as well as teaching that the antenna can be housed within a belt (see column 8, lead lines 34-38). Such a housing inherently possesses the ability to have clothing pulled through the channel created by buckling the belt, thereby holding the antenna in a substantially fixed position relative to the implanted device. The Pool'975 patent teaches a signal transfer unit (see abstract) enabling transfer of physiological data from a physiological sensor attached to a mammalian subject in to a remote device (see abstract). According to the Webster's II New Riverside University dictionary the ring like structure of the belt described within the Pool'975 patent (see column 8, lead lines 34-38) fits the definition of both a channel and an aperture because an aperture is defined as an opening as a hole gap or slit, and a channel is defined as a course through which something can be directed or moved, and though such a ring was not constructed to, it is still capable of holding a portion of clothing associated with a patient due to the fact that the clothing can be placed within the opening, and in turn hold the ring shaped antennae in a relatively fixed position relative to an implanted medical device. The Pool'975 patent teaches the use of a "wand or some other extendible head, containing at least an antenna, is connected to the remainder of the programmer unit via a stretchable coil cable..." (See column 3, lines 6-11). The Pool'975 device inherently possesses a wide end to pull clothing through (see column 8, lead lines 34-38). Because the opening of the belt like housing of the antenna can be defined as both a channel and an aperture, if the belt like housing of the device were held vertically then rotated about its vertical axis, the channel/aperture of the housing would appear to be much thinner than the channel/aperture of the coil when it is not rotated.

In reference to claims 11 and 20, because the opening of the belt like housing of the antenna can be defined as both a channel and an aperture, if the belt like housing of the device were held vertically then rotated about its vertical axis, the channel/aperture of the housing would appear to be much thinner than the channel/aperture of the coil when it is not rotated. The examiner suggests that the applicant alters the phraseology of the claim to state that the thinner channel is disposed next to, above, or beneath the wider aperture, or something of the like.

In reference to claim 15, referring to an object or orifice as being teardrop shaped is quite broad, considering the fact that a teardrop can be a multitude of shapes considering the environment. Teardrops can appear to be circular, similar to the belt like housing of the Pool'975 patent, in many environments.

In reference to claims 12 and 18, the Pool'975 patent teaches a signal transfer unit (see abstract) enabling transfer of physiological data from a physiological sensor attached to a mammalian subject in to a remote device (see abstract). According to the Webster's II New Riverside University dictionary the ring like structure of the belt described within the Pool'975 patent (see column 8, lead lines 34-38) fits the definition of both a channel and an aperture because an aperture is defined as an opening as a hole gap or slit, and a channel is defined as a course through which something can be directed or moved, and though such a ring was not constructed to, it is still capable of holding a portion of clothing associated with a patient due to the fact that the clothing can be placed within the opening, and in turn hold the ring shaped antennae in a relatively fixed position relative to an implanted medical device. The Pool'975 patent teaches the use of a "wand or some other extendible head, containing at least an antenna, is connected to the remainder of the programmer unit via a stretchable coil cable..." (See column 3, lines 6-11).

In reference to claim 23, referring to an object or orifice, as being teardrop shaped is quite broad considering the fact that a teardrop can be a multitude of shapes considering the environment. Teardrops can appear to be circular, similar to the aforementioned belt like housing of the Pool'975 patent, in many environments.

Alternatively, in the same problem solving area, both Tiefengraber'110 and Wallerstorfer'995 teach antenna tags wherein an aperture comprises a wide end and a channel adjacent to the wide end formed to hold a portion of an item of clothing and hold the antenna in a substantially fixed position (Tiefengraber'110: Fig. 1, aperture 15; column 3, lines 5-15; Wallerstorfer'995: Fig. 10, aperture 47, or alternatively any of the fastening mechanisms in Figs. 3, 6, 11, 21; column 6, lines 44-66). In the same field of endeavor, Hagfors'221 shows an antenna attached to an external device and placed substantially in a fixed position relative to an implantable device that comprises a wide end and a narrower channel adjacent capable of holding a portion of an item of clothing. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Pool'975 with the antenna aperture capable of holding an article of clothing as taught by any of Tiefengraber'110, Wallerstorfer'995, and Hagfors'221 in order to provide the Pool'975 system with the same advantages of holding an antenna in a substantially fixed position.

6. Claims 5, 6, 8, 16, 21, 22, 24 and 26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cimochoowski'986, or are rejected over Cimochoowski'986 in view of Tiefengraber'110 or in view of Wallerstorfer'995 or in view of Hagfors'221.

In reference to claims 5, 6, 21 and 22, the Cimochoowski'986 patent discloses the claimed invention except for rubberized grips. It would have been obvious to one of ordinary skill in the art at the time of the invention's conception to modify the antenna of the claimed device with rubberized grips since it is known in the art that rubberized grips can be used to improve the device's portability.

In reference to claims 8 and 24, though the Cimochoowski'986 patent does not teach the use of an insulative telemetry head housing that encases the antenna, the Cimochoowski'986 patent does teach the use of telemetry coil that acts as antennae (see fig. 12) and such housing is common in the art.

Thus it would have been obvious to one of ordinary skill in the art to incorporate such housing into the Cimochoowski'986 invention to protect the coils from damage and as a result of the commonality of said housing in the art.

In reference to claims 16 and 26, the Cimochoowski'986 patent discloses the claimed invention except for a neurostimulator, however the Cimochoowski'986 patent does teach the use of an implanted device in conjunction with an external programming device, and the use of an external programmer in conjunction with an internal device is quite common.

Thus it would have been obvious to one of ordinary skill in the art at the time of the claimed invention's conception to modify the implanted neuralstimulator with an external programmer due to the commonality of such a combination and to provide the user with a convenient means for adjusting the stimulation parameters of the implanted device.

7. Claims 13, 14, 16, 17, 21, 22 and 26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Pool'975, or are rejected over Pool'975 in view of Tiefengraber'110 or in view of Wallerstorfer'995 or in view of Hagfors'221.

In reference to claims 13, 14, 21 and 22, the Pool'975 patent discloses the claimed invention except for rubberized grips. It would have been obvious to one of ordinary skill in the art at the time of the invention's conception to modify the antenna of the claimed device with rubberized grips since it is known in the art that rubberized grips can be used to improve the device's portability.

In reference to claims 16, 17 and 26, the Pool'975 patent discloses the claimed invention except for a neurostimulator, however the Pool'975 patent does teach the use of an implanted device in conjunction with an external programming device, and the use of an external programmer in conjunction with an internal device is quite common.

Thus it would have been obvious to one of ordinary skill in the art at the time of the claimed invention's conception to modify the implanted neurostimulator with an external programmer due to the commonality of such a combination and to provide the user with a convenient means for adjusting the stimulation parameters of the implanted device..